

Surface Mining Reclamation and Enforcement, Interior

§ 931.15

and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

14. Executive Order 11988 (May 24, 1977), for flood plain protection.

15. Executive Order 11990 (May 24, 1977), for wetlands protection.

16. Executive Order 12898 (February 11, 1994) for Federal Actions to Address Environmental Justice on Minority Populations and Low Income Populations.

17. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

18. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

19. The Constitution of the United States.

20. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

21. 30 CFR Chapter VII.

22. The Constitution of the State of Montana.

23. Montana Strip and Underground Mine Reclamation Act (MSUMRA), part 2, Chapter 4, Title 82, Montana Code Annotated.

24. Title 26, Chapter 4, Subchapter 3, Administrative Rules of Montana.

25. Montana Environmental Policy Act (MEPA).

[63 FR 40794, July 30, 1998]

PART 931—NEW MEXICO

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AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 45 FR 86489, Dec. 31, 1980, unless otherwise noted.

§ 931.1 Scope.

This part contains all rules applicable only within New Mexico that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 931.10 State regulatory program approval.

The New Mexico State Program as submitted on February 28, 1980, and amended and clarified on June 11, 1980, August 7, 1980, and September 10, 1980, was conditionally approved, effective December 31, 1980. Copies of the approved program together with copies of the letter of the New Mexico Energy and Minerals Department, Division of Mining and Minerals, agreeing to the conditions in 30 CFR 931.11 are available at:

(a) Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 2040 South Pacheco Street, Santa Fe, NM 87505.

(b) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., suite 1200, Albuquerque, NM 87102.

[47 FR 47380, Oct. 26, 1982, as amended at 55 FR 17607, Apr. 26, 1990; 59 FR 17933, Apr. 15, 1994]

§ 931.11 Conditions of the State program approval.

The approval of the State program is subject to the following conditions:

(a)–(j) [Reserved]

[45 FR 86489, Dec. 31, 1980, as amended at 47 FR 23153, 23155, May 27, 1982; 47 FR 47380, Oct. 26, 1982; 48 FR 28088, June 20, 1983; 49 FR 30691, Aug. 1, 1984; 71 FR 69195, Nov. 30, 2006]

§ 931.13 Preemption of New Mexico laws and regulations.

Under the authority of sections 505(b) of SMCRA, 30 U.S.C. 1255(b), and in accordance with the position taken by the State of New Mexico, the following provisions of New Mexico law and regulation are hereby preempted and superseded as they may apply to coal exploration and surface coal mining and reclamation operations:

The State Wildlife Conservation Act (17–2–37 to 17–2–46 NMSA 1978) to the extent it is inconsistent with provisions of SMCRA related to the Endangered Species Act of 1973 (16 USC 1531 *et seq.*).

§ 931.15 Approval of New Mexico regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these

amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

| Original amendment submission date | Date of final publication | Citation/description |
|-------------------------------------|---------------------------|---|
| February 28, 1982 | May 27, 1982 | Procedures for Posting and Publishing Notices of Show Cause Orders. |
| July 9, 1982 | October 26, 1982 ... | CSMC 80–1–19–15(d), 80–1–20–71(i), 20–102(a); 80–1–29–12(b), definition of “Unconsolidated Stream-laid Deposits Holding Streams”. |
| February 8, 1984 | August 1, 1984 | CSMC 80–1–14–23(a), (b). |
| June 6, 1984 | January 4, 1985 | CSMC 80–1–1–5 definition of roads; 80–1–20–150, 151. |
| June 20, 1984, July 18, 1984. | January 31, 1985 ... | CSMC 80–1–1–11; 80–1–11–30; 80–1–20–103. |
| August 12, 1987 | February 11, 1988 .. | CSMC 80–1–30–12(c) through (l). |
| September 1, 1988 ... | January 30, 1989 ... | CSMC 80–2–22–29(p). |
| June 17, 1987 | March 9, 1989 | CSMC 80–1–5–25, –26; 80–1–8–11; 80–1–9–18; 80–1–11–27, 80–1–20–89, –102, –103, –106, –181; 80–1–29–11; 80–1–33 Training, Examination, and Certification of Blasters. |
| April 18, 1988, October 20, 1988. | March 17, 1989 | CSMC 80–1–20–71(b), –81, –83(b), –85, –92(b). |
| February 21, 1989, August 17, 1989. | December 26, 1989 | CSMC 80–1–20–41(d)(1), –42(a)(1). |
| March 29, 1989, April 26, 1989. | April 26, 1990 | CSMC 80–1–20–83(b), –89(d)(2), –103(a)(1); 80–1–29–11(a); 80–1–33–11, –14, –15(e)(1). |
| May 25, 1989 | November 23, 1990 | CSMC 80–1–1–5, definitions of “affected area,” “self-bond”; 80–1–8–20; 80–1–9–16; 80–1–14–23(d)(2), –40(a)(2); 80–1–20–97(b), (c); 80–1–31–21 through –24; July 12, 1990 Policy Statement. |
| July 22, 1989 | February 26, 1991 .. | CSMC 80–1–1–5, definition of “other treatment facilities;” 80–1–20–41(f), –46, (a), –49. |
| April 24, 1990 | June 21, 1991 | CSMC 80–1–20–42(a)(8), –133(c). |
| March 15, 1990 | December 31, 1991 | CSMC 80–1–1–5, definitions of “cumulative impact area,” “previously mined area,” “excess spoil,” “impoundment,” “coal processing waste,” “coal processing waste bank;” 80–1–2–11(f), –12(b)(2); 80–1–4–15(b); 80–1–6–10, –11(b)(5), –12(b)(7), –13(d); 80–1–8–14(b)(1)(vi), –15(c), –16(b)(3), –24, –27(a); 80–1–9–13(f), –14(c), –21(b) through (d); 80–1–10–13, (a), (c), (e), –17(a)(1)(i), (6); 80–1–11–11(a)(3), –15(a), (b), –19(c), –27(e); 80–1–13–11(a), –12(c), (d), –18(c)(3), (d), (e); 80–1–20–11(f), –41(a), –43(a), –44(a), (c), –52(a), (b), –57(a)(1), (2), –61 through –68, –71(f), (j), (k), –82(a), –91(c), –97(d)(10), –102(a), (f), (g), –111(c), –112(c), (d); 80–1–24–11(c), –12(a)(1), –15(c)(2) through (6); 80–1–26–12(c); 80–1–29–16(a); 80–1–30–13(d); 80–1–31–17(b)(1), 18(b)(1); Policy Statement for Records and Retention. |
| July 9, 1991 | April 13, 1992 | CSMC 80–1–20–42(a)(4)(ii), (a)(8). |
| November 22, 1991 .. | June 23, 1992 | CSMC 80–1–20–72(d), –83(b). |
| January 16, 1991 | December 17, 1993 | CSMC 80–1–1–5, definition of “owned or controlled and owns and controls;” 80–1–4–15(b)(2); 80–1–7–13(a) through (j); –14(a) through (d); 80–1–9–21(c), –25(b), (c), (e), –37(a) through (e), –39(b), –40; 80–1–11–17(c), (2), (3), (d), (e), –19(i), –20(a), (b)(1), (i), (iii), (2), (i), (ii), (3), (c), (1) through (4), –24(a), (b), (c), –29(d); 80–1–19–15(c)(2), (3), (4), –17(a), (b); 80–1–20–91(c), –93(a), (c), (d), (e), –116(a), (b)(1), (3), (6), (7), (d) through (d)(3), –117(a) through (d), (1), (2), (3)(i), –121(a), –124, –150(a)(2)(i), (iii), (b)(9), (c), (e)(1), (g)(5), (6), (7), –151(a), (b)(2), (c)(1), (6); 80–1–30–11(b), (l); NMSA 69–25A–31. |
| October 26, 1994 | February 15, 1995 .. | CSMC 80–1–34–1 through 10. |
| January 22, 1996 | May 29, 1996 | CSMC 80–1–1–5 definitions of “Applicant/violator system” or “AVS,” “Federal violation notice,” “Ownership or control link,” “State violation notice,” and “Violation notice;” “Drinking, domestic, or residential water supply,” “Material damage,” “Noncommercial building,” “Occupied residential dwelling and associated structures,” “Replacement of water supply;” “OSM,” “Qualified Laboratory,” “Road,” “SMCRA;” 80–1–4–15(b)(1); 80–1–7–14(c) (1) through (5); 80–1–9–25(a)(2), (3), (c), –39(a) (1) through (6), (b), (c)(1) through (9); 80–1–11–17(c), (d), –19(i), –20(b)(1), (ii), (3), (c)(1), (2), (d), (e), –24(a), –29(d), –31(a) through (d), –32(a) through (c), –33 (a) through (d), –34(a) through (d); 80–1–19–15(c)(2), (3), (iii), (4); 80–1–20–41(e)(3)(i), –49(d), (e)(1) through (11), (f)(2), (g)(4), (5), –82(a)(4), –89(d)(2), –93(a)(1), –97(b), (c), –116(b)(1), (5), (6), –117, (c)(1), (3), (4), (d)(2), (3)(i), –124(a) through (d), –125(a) through (e), –127, –150(c). |
| January 6, 1998 | June 8, 1998 | 19 NMAC 8.2, Subparts 1 through 34 (recodification). |
| March 11, 1996 | April 10, 2000 | 19 NMAC 8.2 813.K (1) through (3); 813.L; 1106.C; 1412.A(2) (i) through (vii); 2054.A (1), (2), (3), and (5); 2055.C(1); 2076.B; and 2077.A. |
| November 13, 1998 .. | September 11, 2000 | 19 NMAC 8.2 107.M(1); 107.O(2); 1107; 909.E(5); 918.D; 2017.D, F(2), G(4), and G(5); 2065.B(5)(iv); and 2071.A through D. |
| December 1, 1999 | November 2, 2000 .. | 19 NMAC 8.2 107.I(8); 107.A(20); 507.A(1); 2064; 2065.A; 2065.B(1), (2), (3), and (5)(iii); and the Coal Mine Reclamation Program Vegetation Standards guidance document. |

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| Original amendment submission date | Date of final publication | Citation/description |
|--|---|---|
| September 22, 2000 November 28, 2001 .. | January 18, 2001 ... July 15, 2002 | 19 NMAC Parts 1 through 34 (recodification) 19.8.1.7.F(5); 19.8.1.7N(2); 19.8.1.7.O(5); 19.8.1.7.P(12); 19.8.1.7.Q(1); 19.8.2.201; 19.8.2.202.A through H; 19.8.2.203; 19.8.3.300.C; 19.8.6.602.A and 603; 19.8.7.704.C; 19.8.8.801.B; 19.8.8.802.A; 19.8.9.912.A and B; 19.8.11.1106.D; 19.8.13.1307; 19.8.14.1412.A; 19.8.14.1415.A; 19.8.19.1900.A, C and C(2); 19.8.20.2009.E and E(5); 19.8.20.2057.A; 19.8.20.2058.A; 19.8.24.2400.C; 19.8.29.2900.G and H; 19.8.31.3107.A; 19.8.32.3200.B; 19.8.32.3203.A and B; 19.8.32.3206.A; and 19.8.35.7 through 14 NMAC. |
| October 27, 2003 | April 13, 2004 | 19.8.1.7.P(8) and (9); 19.8.1.7.T(2); 19.8.5.506.A, B, D, E, F, and G; 19.8.12.1200.A; 19.8.13.1300.B; 19.8.13.1301.A(1), B, C, and E(1) and E(2); 19.8.20.2073 (C), (D), (E), and (F) NMAC |
| November 18, 2005, as revised on March 27, 2006. | October 19, 2006 ... | NMSA, sections 69–25A–18.A, B, C, D and F, concerning the decisions of the Director and appeals; NMSA, sections 69–25A–29.A, B, C, D, and F, concerning the administrative review of a notice or order by the Director; NMSA, sections 69–25A–29.G, concerning deletion of statutes allowing for review by the Commission of decisions of the Director; NMSA, section 69–25A–30.A, concerning judicial review of final decisions by the Director; NMSA, sections 69–25A–36, concerning termination of agency life; NMAC, sections 19.8.11.1100.A(3), D, and D(2), concerning public notices of filing of permit applications; NMAC, section 19.8.11.1101.C, concerning opportunity for submission of written comments on permit applications; NMAC, sections 19.8.11.1102.A and B(2), concerning the right to file written objections; NMAC, sections 19.8.11.1103.A(3), B, B(1), D, E(1), and F, concerning hearings and conferences; NMAC, section 19.8.11.1104.B, concerning public availability of information in permit applications on file with the Director; NMAC, sections 19.8.11.1105.C(2), D, E, and F, concerning review of permit applications; NMAC, sections 19.8.11.1106.C, D(3), F, G(1) and (2), and N, concerning criteria for permit approval or denial; NMAC, sections 19.8.11.1107.A, B, B(1), B(1)(b), B(3), C, D, E, and F, concerning general procedures for improvidently issued permits; NMAC, section 19.8.11.1108.B, concerning existing structures and criteria for permit approval or denial; NMAC, sections 19.8.11.1109.A(4), B, B(1) and (2), B(2)(b), B(3), and D, concerning permit approval or denial actions; NMAC, section 19.8.11.1110.A(1), concerning the rescission process for improvidently issued permits; NMAC, section 19.8.11.1111.B, concerning permit terms; NMAC, section 19.8.11.1113.C(2), concerning conditions of permit for environment, public health and safety; NMAC, section 19.8.11.1114, concerning conformance of permit; NMAC, sections 19.8.11.1115.A, B, and C, concerning verification of ownership or control application information; NMAC, sections 19.8.11.1116.B and B(2)(b), concerning review of ownership or control and violation information; NMAC, sections 19.8.11.1117.A, A(1), (2) and (3), B, C, D, D(1) and (2), and D(2)(a) and (b), concerning procedures for challenging ownership or control links shown in the applicant violator system; NMAC, sections 19.8.11.1118.B, B(1), (2) and (3), B(3)(1), C, C(1)(a) through (c), and C(2), concerning standards for challenging ownership or control links and the status of violations; NMAC, section 19.8.12.1201, deletion of rules allowing for review by the Commission of decisions of the Director; NMAC, sections 19.8.12.1202.A, concerning judicial review of final decisions by the Director; NMAC, sections 19.8.12.1202.B, concerning judicial review of decisions by the Commission; and NMAC, sections 19.8.12.1203.A through L, concerning formal review of notices of violations, cessation orders, and show cause orders. |
| November 18, 2005 .. | November 30, 2006 | NMSA, sections 69–25A–29.F, concerning award of legal costs and expenses; and NMAC, sections 19.8.12.1204.A through G, concerning award of legal costs and expenses, including attorney fees. |
| November 28, 2007 .. | November 18, 2008 | 19 NMAC Parts 1 through 35 (recodification), 19.8.1.7.G(1); 19.8.11.1100.D(1); 19.8.11.1102.A; 19.8.11.1103.A; 19.8.11.1109.B and C; 19.8.13.1301.E(1) and E(2)(b); 19.8.13.1307.B(2); 19.8.14.1412.A(2)(f); 19.8.14.1412.F; 19.8.20.2065.A and B(1); 19.8.20.2068; 19.8.30.3000; 19.8.31.3108.B; 19.8.31.3110.B; 19.8.5.504.D; 19.8.7.701.F; 19.8.8.812.D; 19.8.11.1100.B(1), (2), (3), and (4), D(5), E(3), and F; 19.8.11.1103.B, E, and F; 19.8.13.1301.E(2)(a); 19.8.31.3106.B(3)(a). |
| September 1, 2010 ... | January 30, 2012. .. | 19 NMAC 8.1.7.K; 8.1.7.O(8)(a) and (b); 8.1.7.W(2)(a) and (b); 8.7.701.C(3); 8.11.1105.E; 8.11.1105.F; 8.11.1114; 8.11.1119.A through H; 8.11.1120.A through C; 8.11.1121.A through D; 8.20.2010.A(2)(a) and (b) (deletion); 8.30.3000.L; 8.30.3003.D; 8.30.3004.D; 8.31.3103.A; 8.31.3109.A; 8.31.3109.A(1) through (3) (deletion); 8.31.3113.A, B, and C; 8.34.3402.F(1) and (2); 8.34.3408.C(2) and (3); and 8.35.13. |

[62 FR 9947, Mar. 5, 1997, as amended at 63 FR 31113, June 8, 1998; 65 FR 18894, Apr. 10, 2000; 65 FR 54794, Sept. 11, 2000; 65 FR 65778, Nov. 2, 2000; 66 FR 4673, Jan. 18, 2001; 67 FR 46384, July 15, 2002; 69 FR 19325, Apr. 13, 2004; 71 FR 61685, Oct. 19, 2006; 71 FR 69195, Nov. 30, 2006; 73 FR 68345, Nov. 18, 2008; 77 FR 4466, Jan. 30, 2012]